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**United States
Department of
Agriculture**

Food and
Nutrition
Service

Northeast Region

10 Causeway St.
Room 501
Boston, MA 02222

Mary Mayhew, Commissioner
Department of Health and Human Services
11 State House Station
221 State Street
Augusta, ME 04333

Dear Commissioner Mayhew:

The Food and Nutrition Service (FNS) appreciates the assistance you and State agency staff provided in our site visit to Maine during the week of August 18, 2014. The site visit was conducted under the authority of Section 11 of the Food and Nutrition Act of 2008, as amended, to provide oversight of the State administration of the Supplemental Nutrition Assistance Program (SNAP) and its implementation of the photo Electronic Benefits Transfer (EBT) card to ensure compliance with all applicable Federal laws and regulations.

FNS staff from the National and Northeast Region, including Civil Rights staff, conducted a series of interviews with Maine Office for Family Independence (OFI) officials, SNAP clients, retailers, and advocacy groups in the areas of Portland, Ellsworth, and Bangor. Based on FNS' observations and information gathered during the site visit, we have determined there is a need for corrective action in the key areas specified below.

Optional Nature of Program:

During the site visit, FNS was verbally assured by State officials, including Bethany Hamm and Chase Martin, that the State's photo EBT card program does not require photos on EBT cards for SNAP clients but gives SNAP clients the option to have a photo on their EBT card. However, information gathered from interviews conducted on-site with OFI staff and external stakeholders, and a review of the State's materials and practices seem to indicate that the program is a requirement for most SNAP clients. For example,

- Signage in DHHS offices noting exemptions under "State law" implies the photo is required for non-exempt clients;
- A mass mailing sent to all clients in the Bangor service area states, "Most cardholders will be *required* to have their photo placed on their EBT card," and a poster hung in all three district offices states, "In 2014, Maine will *require* most of the State's electronic Benefit Transfer (EBT) Cards to have photos"; and
- If clients refuse to have their photo taken, eligibility workers and/or photo clerks must document the refusal in the eligibility system and notify the local office director who sends client names, case numbers, and reasons for denial to the central office weekly. There is no program requirement to maintain such

records. Moreover, if the program is optional, there should be no reason to gather case sensitive, client-specific data.

Corrective Action Required:

Since Maine has represented to FNS that the State's EBT photo program is optional, the State must affirmatively demonstrate that SNAP clients have a choice whether to have a photo on their EBT card and their choice does not adversely affect their SNAP eligibility. The FNS site visit observations and the State's own communication materials support a finding that the State is requiring most SNAP clients to have their photos placed on their EBT card, and the fact that the program is optional is not communicated at critical points in the application and recertification process. In order to be optional, the State needs to:

- Provide robust communication to affected SNAP clients at application and recertification detailing and affirmatively articulating that the photograph EBT card program is optional for SNAP clients.
- Broadly communicate to SNAP clients that not submitting to the EBT photo program would in no way adversely impact benefits for eligible household members;
- Provide communication to State agency staff and training as needed to ensure policy is correctly applied; and
- Cease its practice of documenting case-sensitive, client-specific data for those clients who refuse to participate in the photo EBT program. The State may only collect the number of individuals or households who refuse to participate if needed for transparency or statistical purposes.

This corrective action is based on FNS' understanding that the State's photo EBT program is optional. If, in fact, the State intends that the photo EBT program be mandatory, FNS will send the State a revised set of correction actions.

Civil Rights of Non-Applicants:

There are significant civil rights concerns about the State's practice of taking photos of all non-applicant heads of households or other non-applicant household members, as the implementation appears to violate Title VI of the Civil Rights Act of 1964. Any individual who applies for SNAP on behalf of eligible household members must be able to access the program without fear.

FNS had previously advised the State of this serious concern in our letter dated June 10, 2014, and the potential chilling effect this policy could have on ineligible household members applying on behalf of eligible household members, including children. In addition, FNS provided that substantial legitimate justification would need to be submitted by the State to ensure compliance with civil rights provisions. The violation of an individual's civil rights in order to protect program integrity would be insufficient justification unless the State can show legitimate cause or provide documentation of the purported benefit. To date, no such justification has been provided by the State. While

the State provided that it is committed to protecting individuals' civil rights in its response received by FNS on July 10, 2014, this statement alone is not sufficient justification.

Corrective Action Required:

As with the prior section, the following corrective action is based on FNS' understanding that the State's photo EBT program is optional. In order to comply with civil rights provisions, Maine must:

- Affirmatively demonstrate that the State's policy of taking photos of non-applicant household members is optional for non-applicants. The FNS site visit observations support a finding that non-applicants are being required to have their photos taken, and that the optional nature of the practice to take photos of non-applicants is not communicated at critical points in the application and recertification process. In order for this practice to be considered optional, the State would need to:
 - Provide robust communication to non-applicants at application and recertification detailing and affirmatively articulating that non-applicants are not required to have their photos taken when applying for SNAP on behalf of eligible household members;
 - Broadly communicate to non-applicants that not having their photos taken would in no way adversely impact benefits for eligible household members;
 - Provide communication to State agency staff and training as needed to ensure policy is correctly applied; and
 - Cease its practice of documenting case-sensitive, client-specific data for those non-applicants who refuse to have their photos taken. The State may only collect the number of individuals or households who refuse if needed for transparency or statistical purposes.
- Eliminate any physical or electronic photographic record of non-applicants taken since the inception of the program unless the non-applicant opted to have their photograph placed on the EBT card as described above. The State must be able to affirm and provide documentary evidence that non-applicants who had photos taken actually opted in.

Program Access:

Information gathered during the site visit indicate that the State is requiring face-to-face interviews in order to obtain photos on the EBT card, regardless of whether the household has chosen to have a photo on its EBT card and in spite of the State's waiver of the face-to-face interview at initial certification and recertification with no need to document household hardship.

The terms and conditions of the State's waiver state that OFI must conduct face-to-face interviews if determined to be appropriate; however, OFI must not require a household to attend a face-to-face interview if attending the interview would be a hardship under 7 CFR 273.2(e)(2). As stated earlier, FNS has been verbally assured by State officials that the State's photo EBT card program gives SNAP clients the option to have a photo on

their EBT card. Therefore, using the photo EBT card program as a justification for requiring households that have not affirmatively opted to have a photo on their EBT card to attend face-to-face interviews is not appropriate and is in violation of the terms and conditions of the State's waiver.

Corrective Action Required:

The State must:

- Cease its practice of requiring face-to-face interviews for households that have not affirmatively opted to have a photo on their EBT card; and
- Grant a hardship exemption in accordance with SNAP regulations at 7 CFR 273.2(e)(2) to clients who are unable to attend a face-to-face interview due to household hardship. Ensure State agency staff are trained on SNAP hardship exemption criteria so that policy is consistently applied.

Retailer Communications and Training:

Another area that can impact program access is retailer communications and training. Based on the site visits to participating retailers, FNS found there to be confusion as to who may use the EBT card. Some retailers believed they should ask for identification for those who use SNAP benefits and the photo on the EBT card must match the person using the card.

To ensure SNAP recipients and authorized representatives who use EBT cards are treated equitably in accordance with Federal law when purchasing food at authorized stores, the State must improve its communications in this area to those impacted. Based on FNS findings, the State is in violation of Section 7(h)(9)(B) of the Food and Nutrition Act, which provides that a State that opts to place photos on the EBT card must also establish procedures to ensure other household members or authorized representatives may use the card.

Corrective Action Required:

The State must:

- Provide examples of communication to all SNAP clients, participating retailers, and State agency staff that:
 - Anyone authorized to use the card may use the card without having to submit to additional verification of identity, as use of the unique Personal Identification Number (PIN) associated with each card is sufficient verification of identity; and
 - All household members and authorized representatives not pictured on the card can continue to access SNAP benefits.
- Share with FNS its procedures to ensure other household members or authorized representatives may use the card so that the State will be in compliance with Section 7(h)(9)(B) of the Food and Nutrition Act.

The State must submit to FNS certification and documentary evidence that the above issues have either been addressed or a plan as to how the State will address these issues no later than 45 days from receipt of this letter. Additionally, based on FNS' site visits to states, including Maine, FNS guidance pertaining to implementation of the photo EBT card is forthcoming. All States that implement the photo EBT card will be required to adhere to the guidance in order to demonstrate that their photo EBT card program is in compliance with all applicable Federal laws and regulations.

As provided in our letter of February 26, 2014, we are taking this opportunity to also remind the State that any EBT contract modifications that increase costs require approval by FNS before signing. Increased EBT costs, whether contractual or procured from other sources also require an Implementation Advance Planning Document Update. Please refer to the FNS follow-up e-mail dated June 11, 2014, to OFI Division Director, Business Technology for outstanding items requested.

FNS is committed to assisting Maine in meeting the shared goals of protecting program integrity and access by ensuring that the State's initiative to implement photo EBT cards is compliant with Federal laws and regulations and respects the rights and responsibilities of individuals and families who apply for and participate in SNAP.

While we anticipate your continued cooperation in this matter, please be advised that failure to take appropriate corrective actions as specified above would place the State at risk of losing Federal financial participation. Failure to address the civil rights concerns will result in additional compliance activities to include referral to the USDA's Office of the Assistant Secretary for Civil Rights, and possible referral to the United States Department of Justice.

If you have any questions regarding this letter, please contact Bonnie Brathwaite, Supplemental Nutrition Assistance Program Director, Northeast Region at (617) 565-6397, or Stephen Miliano, Civil Rights Director, Northeast Region at (617) 565-6397.

Sincerely,



Kurt Messner
Regional Administrator
Northeast Region

cc: Bethany Hamm, Director
Jessica Shahin, Associate Administrator – SNAP
Bonnie Brathwaite, SNAP Director – NERO
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